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Marcus B. Schaefer  
President/CEO

November 6, 2017

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street SW, Room TW-A325  
Washington, D.C. 20554

VIA ELECTRONIC MAIL

**Re: In the Matter of Credit Union National Association Petition for Declaratory Ruling (CG Docket No. 02-278)**

Dear Ms. Dortch:

On behalf of Truliant Federal Credit Union ("Truliant"), I am writing in support of the Credit Union National Association's ("CUNA") Petition for Declaratory Ruling ("Petition") requesting an established business relationship exemption from the Telephone Consumer Protection Act's ("TCPA") "prior express consent" requirement for informational calls or text messages made by credit unions to wireless numbers. For purposes enumerated below, I find the Federal Communication Commission's ("FCC") regulation unduly burdensome on our credit union industry and unnecessarily restrictive beyond the original intent of the TCPA. Therefore, I strongly concur with CUNA's Petition and strongly urge the FCC to exempt informational calls made to a cell phone using an automatic telephone dialing system ("ATDS") from the requirement to have prior express consent and to remove the limit on the amount of calls which can be made to inform members of credit unions of data breaches impacting their personal information during exigent circumstances.

***Original Intent of TCPA***

TCPA was originally enacted for the stated purpose to "protect the privacy interest of residential telephone subscribers." At the time, Congress' goal was to place serious restrictions on the use of automated dialing technology in placing unwanted, unsolicited, and frequent advertising calls using ATDS technologies of the 1990s. The fact that telemarketers could place numerous unsolicited calls to consumers without consent was a major impetus for the adoption of TCPA. The ability to place these calls without consent was considered an invasion of privacy under TCPA, and Congress sought to adopt strict restrictions to remedy this problem. For purposes of this letter it is important to note that Congress' original intent in the legislation was not to limit

financial institutions, namely credit unions', ability to provide critical information impacting an individual account, such as fraud, data breaches, or identity theft.

However, in the 26 years since its enactment, the FCC has drawn distinctions between residential and wireless numbers for purposes of obtaining prior express consent. Slowly, the FCC has sought to update TCPA to account for changes in digital technology, but it has left financial institutions struggling to comply with the law and maintain the safety and security of member information.

As it stands today, TCPA is fraught with ambiguity such as the definition of an ATDS. Background information from the Congressional Report accompanying the TCPA House Bill indicates that Congress intended the ATDS provision to address automated dialing devices which generate millions of telephone numbers and are dialed without human intervention. Since its enactment, the FCC's interpretation of TCPA has created two distinction problems for which I would like to address: first, it has significantly increased the time and expense of compliance which comes at a cost to member-services; secondly, it has inhibited our ability to provide immediate and effective financial protection to members who most desperately need our assistance when problems arise on their accounts.

### ***Background of Truliant***

Truliant is a 501(c)(1) non-profit financial institution organized under the Federal Credit Union Act. We employ approximately 650 associates in three states: North Carolina, South Carolina and Virginia. We serve approximately 220,000 members largely concentrated in rural and under-served areas in the Southeastern United States. Our mission compels us to offer financial services and to provide financial literacy to our members as part of our commitment to improving their lives. No more pressing need exists for our member than when a member's financial information is compromised through fraud, merchant data breaches or identity theft. We take these issues very seriously and train our associates to handle them in immediate, efficient, yet effective ways to best serve our members. Our members also expect us to maintain this commitment.

At Truliant, as with any credit union, members are not just consumers, but owners of the financial institution. Thus, our member-owners share a stake in the institution's ability to thwart risks to member financial information. Members want access to alerts and information which can affect their daily lives, and we strive as a member-owned financial institution to ensure we have the most direct, immediate and effective lines of communication to our members.

However, we are limited in our ability to meet these objectives and to comply with the law. The fact that TCPA was not designed to inhibit financial institutions' ability to safeguard member information through constant immediate contact suggests that the FCC should take necessary steps to create an established business relationship exemption to include calls made by credit unions to their members in response to data breaches.

### ***Impact on Truliant's Operations***

Particularly since the FCC's 2015 Omnibus Order, which went far beyond TCPA's original intent in restricting use of ATDS to reach members' cell phones, Truliant has had to expend

numerous hours of work effort in order to ensure full compliance, across the board, for all members to receive informational calls, which most members consider a necessary function of their credit union. When members affirmatively opt-out of receiving phone calls, this sweeping rejection also means the member cannot receive vital information relating to data breaches, and the consequences could be dire for our members. Without an exemption for exigent circumstances affecting member data, members suffer the ill-effects of increasingly high numbers of data breaches from the hands of merchants and retailers whose data privacy procedures are rarely, if ever, scrutinized. Our inability to reach our members without having to obtain prior consent suffocates our ability to protect the member's personal information, an inherent responsibility for any financial institution, but particularly for a member-owned financial institution such as a credit union.

Another impact is the limit on opportunities to communicate with members under exigent circumstances. Currently, credit unions may only make up to three communications over a three-day period in relation to a data breach. The FCC also requires member consent beyond this limitation. Due to the size and complexity of these breaches, we find that constant communication can often mitigate further exposure of member data because it educates the member on ways to safeguard their personal information. Moreover, we have seen, with recent merchant-based data breaches, countless stories where three attempts to contact members are insufficient to address the threat to compromised member information. Particularly when we have to take action on a member's debit or credit card, the ability to reach the member under these circumstances allows us to limit risk of exposure to both the member and the institution. However, this requires significant flexibility, and in some cases, more effort than three communications. To address these concerns, I would like to offer two recommendations.

### ***Final Recommendations***

First, I recommend that the FCC create an established business relationship exemption for informational calls made to a cell phone using an ATDS. Implicit in every credit union-member relationship is the expectation that their financial institution will diligently and immediately notify them of issues relating to their personal financial information. Furthermore, continuing to limit the exemption runs afoul of the original intent of TCPA which was to safeguard consumers against unwanted telemarketing calls. On the contrary, our members desire our communications as a necessary benefit of membership at Truliant, and establishing the exemption enables us to meet their expectations.

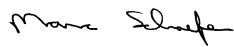
Second, I recommend the FCC remove the limit on the number of calls which can be made under exigent circumstances without member consent. Many of our members often communicate with our associates and depend upon the relationship with their financial institution to safeguard their personal information. If we continue to limit the amount of contact we have with our members, we potentially place our members in even greater peril than the breach because we risk even greater exposure of the member's personal information if not addressed immediately and diligently. Without advising the member on steps to limit exposure, members cannot rely on the relationship with the financial institution to protect their interests. Furthermore, limiting contact with our members during exigent circumstances is counter-intuitive to the purpose of the exemption, which is to immediately, efficiently and directly address the needs members face when their data, possibly even their identity has been compromised.

### ***Conclusion***

The mission of Truliant is to enhance the quality of life of our members and become their preferred financial institution. We value our member's privacy and believe exempting credit unions' ability to place informational calls to members' cell phones, as well as, making unlimited the amount of calls which can be made to inform members of data breaches will enable us to achieve our mission and provide the best service to our members. Therefore, I strongly urge the FCC to take a more reasonable approach in protecting the privacy of millions of Americans without handcuffing credit unions who are acting within the best interests of their members.

Thank you for the opportunity to comment on this issue. If you have any comments or questions, please do not hesitate to contact me at (336) 659-1955.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Marcus Schaefer".

Marcus B. Schaefer  
President/CEO  
Truliant Federal Credit Union